

# Report on the Asian Community Consultation for the Family Law and Culturally & Linguistically Diverse (CALD) Communities Project

July 2004

## Background

The Legal Services Commission of South Australia, in partnership with the Migrant Resource Centre of South Australia and the Multicultural Communities Council of South Australia, received a grant from the Law Foundation to assist it to administer a project to enhance access to and understanding of Australian family law for Culturally and Linguistically Diverse Communities (CALD). The project was intended to benefit CALD communities with 'high need'. A project reference group was set up, including Multicultural SA, Migrant Women's Support and Accommodation Service, Survivors of Torture and Trauma Assistance and Rehabilitation Service, and the Family Court of Australia - Adelaide Registry. Following consultation with the reference group, the African, Asian and Middle Eastern communities were identified as high need communities. The reference group also confirmed that community consultations would be beneficial to ascertain the needs of the communities and appropriate ways to deliver community education in a culturally sensitive fashion. With the assistance of the Multicultural Communities Council of SA, consultations were organized with the various Asian communities and were attended by community workers and leaders.

## Asian Community Consultation

The Asian Community Consultation was conducted Thursday 10/7/04 at the Multicultural Communities Council's premises. Members of the Chinese, Vietnamese, Cambodian, Indian and Filipino communities were present. None of the participants required interpreters.

The aim of the consultation was to obtain information about cultural, religious and community views relevant to these communities when dealing with family issues. However, it must be recognised that this report does not reflect the great diversity among and within different groups, in terms of religion, language, levels of education, culture, demography and experience. Differences in educational background were considerable, with some participants having formal education and others having none whatsoever. Participants' life experiences prior to arriving in Australia varied widely and included stays in refugee centres, war and rebellious uprisings, oppressive governments, torture and the death of family members through injury or disease. The majority of the participants were of Buddhist, Christian and Sikh faith. Within the same country of origin and religious groups, there were differences in culture and practice.

There are two interpretations of Buddhism, the Theravada and the Mahayana. Theravada is the stricter form of Buddhism. It is observed by people from the Cambodian, Indian and Sri Lankan (Sinhalese) community. The Chinese and Vietnamese observe Mahayana Buddhism.

It is acknowledged that the issues which were raised in the consultation are by no means a full representation of the views of the various Asian communities in South Australia. In addition, while this report has been compiled in consultation with the community leaders of the various Asian groups, it is acknowledged that information and ideas may have been misinterpreted in the process of transcription.



The participants were seated in small groups of 4-7 people while they discussed a case study. Each group had a facilitator from the Legal Services Commission or the Adelaide Registry of the Family Court. The role of the facilitator was to explain the various situations and record participants' responses.

A case study about an Asian family – “the Lees” - was used to focus discussion on relevant family issues. The case study highlighted the challenges the family faced in settling in to a new and different culture while retaining their traditional cultural values. The case study was developed based on feedback from various community groups about what they perceive as major hurdles in migration and settling into the new country – Australia.

### **Case study:**

***The Lee family has recently migrated to Australia from an unspecified location in Asia. They have no support network, their extended family was unable to migrate with them and they have difficulty settling into the new and very different place. The husband's English is restricted and he has difficulty finding a job. The wife finds full time work but the children are having difficulty settling into school and the new environment. There are stresses in the marriage. The Lees encounter various problems, including financial difficulties, parenting conflicts, clashes of cultures and domestic violence. Through these difficulties, we explore the interface with the Australian legal system and issues including divorce, property settlement, child protection, child residence/contact and mediation.***

### **Responses to the case study**

#### ***What is family in Asian communities?***

*All participants agreed that family is close-knit and includes extended members such as brothers, sisters, grandparents and in laws. The Chinese and Cambodian group identified family as supportive, accountable, interfering and insular. The family elder is often the decision maker. The majority of the groups identified their families as patriarchal, although there are some families that are matriarchal.*

*The Cambodian participants highlighted the plight of their members: they are of the Buddhist faith, have a poor education, are escaping from torture and hardship and are not able to find work in Australia. This has a major impact on the family dynamic. The Overseas Chinese Association highlighted the fact that the father is the decision maker, respect for elders is essential, there is pressure to keep up appearances, and sons are more valued than daughters (this is exemplified by the one child policy in China). Females are dependant and either do not know their rights or do not have many rights.*

*The Vietnamese and Chinese workers highlighted that in their experience, the common law court system is an alien concept to many of these cultures, generally the father is the authoritative figure, females are treated as inferiors and are not involved in the decision making process. When the families migrate to Australia, there is the constant tension between the external mainstream influence and maintaining strict tradition at home. Many of the cultural values and practices are forced to be watered down. Many of these groups had arranged marriages and would want the same for their children.*

*Society is generally patriarchal and boys are privileged and carry the family name. Social security is not available in Asia and the practice is that the children financially support and look after the elders. All money the children earn in their adult lives is expected to go to the household for the purpose of supporting their parents or parents-in-law. Men will be expected to support their parents, while women will be expected to support their husband's parents. There is imbalance and gender inequality from a very early stage and boys are allocated more money for education and travel.*

*The Filipinos view the family as the nucleus of society, the father is the decision maker, and the mother is the manager of the home. There is almost always no equality of sexes.*

*The mainstream culture needs to understand the dynamic of the Asian family, the hierarchical relationships. The Vietnamese stated that the elders should be consulted in issues pertaining to children. There is also a cultural expectation to look after the elders. The tensions of the influence of Western society, Asian values and intergenerational issues are very pronounced.*

## **Family dynamic in Australia**

***The nuclear Lee family (mother, father and children) have migrated to Australia. The extended family remain in Asia. The wife finds full time work in Australia as her proficiency in English is sound. The husband struggles to find suitable employment. He becomes a “house husband”. This is a major change in the family dynamic. The male/female role reversal is one fraught with difficulty. The male is no longer the bread winner of the family. The female is overloaded with domestic chores and external work and there is a view that family duties are being neglected, having a negative impact on the children.***

*The husband’s frustration could lead to domestic violence. He may feel inadequate and refuse to help with domestic house work. He would see the wife as having changed because of mixing with “white” girls. The man would feel depressed as he is used to having an outside job and he would not like role reversals. He would have an inferiority complex as he sees himself as the head of the family and there could be a breakdown of the chain of command with loss of respect and erosion of his position of authority.*

*The woman's responsibility is domestic work and she may not be happy to be working externally and hence neglecting her traditional role of caring for the children and remaining within the domestic sphere. She would be overloaded with both home and work responsibilities.*

*Equal rights are unknown in the Asian society as the husband is the authoritative figure. There will be practical difficulties now that the wife is the financial provider for the family.*

*The husband would be upset, jealous and would not trust his wife. It is seen as the wife's responsibility to look after the children and to do the cooking. If she is working, this could cause friction between the couple. The wife may be upset by the fighting. Due to insecurity, she may not declare all her financial income to her husband. She would expect him to find a job. The children would find it difficult because they would be looking up to the mother and not the father, which would be unacceptable in an Asian family. The father, more than anyone, would find it very difficult to come to terms with the current situation.*

*The tensions are real, caused by the clash in family values. On the one hand, there is the wife with her newfound financial independence. The question raised is whether she is neglecting her domestic duties, especially her duty towards the children. The husband, on the other hand, suffers feelings of disempowerment.*

*The “house husband” is faced with shame and social isolation. He wants to go back to his homeland. The working wife is overloaded with paid employment and house work. She is in the new role as the breadwinner. The Chinese identified that this may give the wife a new source of strength, her views might be better respected now. She may view her husband as inferior, as he is no longer the provider.*

*There is certainly potential for domestic conflict and argument. All participants agreed that in the absence of extended family, there is almost no support for the children. Both husband and wife may blame God for their predicament.*

## Children's Issues



***This part of the case study deals with the Lee's teenage son, who is having difficulty in school. He is receiving negative reports from school, getting into fights with other kids and being disruptive. This information has been conveyed to the parents by the school. The parents are upset. They migrated in order to give their children a 'better life'. Negative reports from school are viewed extremely seriously.***

***The father attempts to remedy the situation. He has not had domestic responsibility before and finds it difficult to communicate with the child. He disciplines the child physically. The school becomes aware of this incident and the principal requests that the parents make an appointment. The parents are fearful that the government may take the child away from them.***

The Filipino participants highlighted that the family elders (and parents) need to talk to the son. There could be problems if the extended family did not migrate with the nuclear Lee family. They identified cultural and generational conflict and the need for support from the church. One would only approach the community as a last resort as there would be "loss of face" issues. The Chinese were also concerned about this shame factor. The family and the boy, especially, need someone with an authority-guidance role which is lacking at the moment. It was agreed that the family needs to approach a church or religious leaders and perhaps community workers. All participants could see the difficulty and the problems the boy was facing in a new country/new culture/mum at work etc. The Sikhs highlighted the respect that their community has for teachers and hence parents will be reluctant to approach the school. The potential for CYFS interference was explored. The Vietnamese remarked that rather than CYFS interference, the parents need to work with the school, via the counsellor. The concept of making an appointment to see a counsellor was alien to the participants. They are used to family leaders and community elders on whom they could 'just drop in' whenever there is trouble.

Many Asians feel that the conflict of cultures erodes authority of parents and family elders. Participants perceive that the rights given by the Australian legal system is detrimental to the child's interest and interferes with the parent's management of the family.

## Separation

***There is ongoing tension in the marriage. Due to this, the wife moves out of the matrimonial home, leaving the husband and children. She moves in with a friend from work.***

It was highlighted by all that the wife leaving home is a very uncommon occurrence. The husband's emotions would be anger, depression, shame, stigma, perhaps suicidal tendencies. He has never managed the home and hence may need a house keeper as a replacement. The Chinese community highlighted that he may seek a mistress. The husband may resort to addictive behaviour such as gambling or alcohol consumption. This will create further financial problems for the Lee family. All parties agreed that he needed counselling but issues of where and by whom were not explored. The husband may want to hurt his wife. The situation would be far more serious if she had left the marital home to live with a male friend from work. The husband will target the male friend too. The Chinese highlighted the fact that he will become abusive and violent and this will affect the relationship between him and the children who remain at home. The Khmer discussed the higher responsibilities he has at home now. The Vietnamese remarked on his loss of face, loss of social status.

All agreed that it is culturally significant if the wife leaves. She may feel hopeless, guilty, frustrated, angry, stressed, regretful and shameful. At the same time, she may experience independence and happiness. There will be pressure from the community, family and friends. Her performance at work will suffer. Much hinges on whether she is living with a female or male work colleague. The Filipinos highlighted that the wife will seek outside support to maintain family interaction. Both parties will regret their migration; there will be vicious gossip within the community.

The community will view the wife's conduct in a negative light, she is to blame and is responsible for the shame brought on the whole family. The Chinese husband will fight for "custody" of the boys as they carry the family name.

## Property Settlement and Divorce

**Part of the case study deals with the wife returning back to the matrimonial home. The husband wants her to sign an undertaking not to make any claim on the marital property.**

**The husband and wife reconcile temporarily, but later separate again. The participants were asked to talk about the issues would surround divorce and division of property.**

The Sikh community put forward to the larger group the Indian norms pertaining to property settlement. The Indian bride brings property in the form of a dowry at marriage. The dowry depends on the social status and wealth of both the matrimonial families. It consists of one or many of the following: cash, jewellery, pots/pans and household items including furniture, motor vehicle and real estate. Non "certificate of title" items, such as cash, are usually held by the husband's parents. "Certificate of title" possessions, such as real estate, are held in the couple's joint names. In the event that the wife has left her matrimonial home, her parents may excommunicate her. The dowry may be retained by the keeper (husband/his family).

The Chinese have an understanding that the husband will provide for his wife and kids. The Chinese husband pays the wife's family a dowry at marriage. This is retained by the wife's family. Mainstream services need to understand the practices of dowry in each culture when dealing with family law issues in CALD communities. The status of dowry in Australian law is not established. The wife needs legal help to protect her rights. Cambodians said culturally the wife would retain the property and children.

## Mediation

Segments of the Asian community practice arranged marriages - mainly the Indians, Sikhs and Sri Lankans. Such marriages are marriages of the families and community, not just the bride and groom. It often goes back to alliances and links between the two families and hence has far reaching consequences. The break up of such a marriage has an adverse impact not just on the individual couple, but on the extended family and community as a whole. Prior to a break up, there is usually much interference by and involvement of the extended family. Many of these measures are classified as mediation or counselling.

Internal mediation (i.e. without legal interference) is usually conducted by the family elder or the community leader. While the term mediation is used, the role of the internal mediator is more akin to that of a counsellor. The internal mediator explores the possibility of the couple getting back together. There is much pressure on the wife to reconcile with her husband - due to loss of face, children's interest etc.

The Filipinos reaffirmed the general groups' view that the mediation is not culturally sensitive to CALD communities. Mediators fail to understand when an 18 year old Filipino teenager is still expected to live at home and be bound by their parent's authority. There is a perception that the mainstream mediation process has failed in the area of

cultural awareness. Efficient and effective mediation will save much time, money and heart break and prevent the dispute from progressing to the next stage – the court. Mediators must take cultural diversity into consideration. The Filipino group suggested that an Asian mediator be engaged by mainstream services to mediate Asian couples disputes. The mediator would not need to be from the specific subgroup of Filipino, Chinese etc.

The Chinese remarked that mediation may not be popular if the people have not been educated or exposed to the mainstream mediation concept. People will always seek counselling internally (family elders or community leaders) before approaching mainstream services. The family elders will not condone violence and hence the violent husband's conduct will be criticized. The Chinese emphasized the importance of having open dialogue and psychological help/counselling. The need for CALD psychologists and interpreters are important. The Chinese felt that due to the definition of 'family' in their culture, it is important that the mainstream services such as mediation engage the whole family and not just the disputing couple.

Mainstream legal services are perceived as almost always direct the disputing couple to get divorced. The process often is expensive, involving the courts. The Australian Legal system is adversarial and is seen as breaking up the community. People do not understand the Australian legal system, and are lost in this concept.

All participants agreed that cultural awareness is important; CALD workers in the mainstream services will promote trust and further enhance access. It was felt that time is an issue for mainstream mediators and CALD mediation will inevitably take longer. It was suggested that there is often insufficient legal aid and that court is often lengthy, expensive and a bad experience.

## Domestic Violence

Some Chinese participants highlighted the fact that when the parties separate, the husband may become abusive and violent and this will affect the relationship between him and the children who remain at home. Some Filipino participants also indicated that there would be a real risk of physical and emotional domestic violence. They said that the husband may want to hurt not only the wife, but also the friend to whom she fled, particularly if it is a male friend. Participants indicated that these feelings would be prompted by a sense of shame and anger about the family breakdown. Participants also indicated that he may feel resentful of the Australian cultural influence and possibly abusive towards the children.

## Conclusion

There is a significant need by many of these communities to be provided with legal education sessions to deal with the issues that arose in the case study. This is evident from the training needs assessment attached at the end of this document.

Many Asian men are of the view that Australian mediation is biased toward women. This perspective is perhaps due to the equal rights given to women in the Australian society. The interpreter, community worker and mediator will need to be educated on specified cultural issues. More time must be allocated when mediating CALD disputes due to the difference in culture and the complexity that arises as a result. The CALD couple generally do not understand the Australian legal system.

Mainstream services need better education about the active role of the extended family in caring for children, in dealing with mediation, domestic violence and all other areas of family and the law. Participants suggested that CALD workers in mainstream services were an option. In the Asian group, cultural practices and norms take on a dominant role, to a greater extent than religion.

The role of counselling must be further explained within this group. Many community members have attended mediation with the expectation that it is reconciliation counselling. They have returned disillusioned and disappointed. All participants agreed that mainstream services such as community organisations,

courts, mediation and counsellors need to be more aware of cultural diversity.

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**Training Needs Assessment**



## Asian Teaching Needs Assessment

### **Chinese Community**

Child Protection

Immigration and Family

Family Law

Australian Legal System

Child Support

Domestic Violence

Legal Resources in SA.

### **Vietnamese Community**

Child Protection

Family Law

Immigration and Family

Domestic Violence Australian Legal System

### **Khmer Community**

Child Protection

Australian Legal System

Family Law

Immigration and Family

Child Support

Domestic Violence

### **Filipino Community**

Child Protection

Australian Legal System

Immigration and Family

Family Law

Child Support

Domestic Violence

Legal Resources in SA